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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,117	07/31/2003	Hilda Elizabeth Smith	2183-6055US	5350
24247	7590	07/26/2005	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			HINES, JANA A	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 07/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/632,117

Applicant(s)

SMITH, HILDA ELIZABETH

Examiner

Ja-Na Hines

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 11-15 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Amendment Entry***

1. The amendment filed April 29, 2005 has been entered. Claims 1-10 and 16-20 have been withdrawn. Claims 11 and 15 have been currently amended. Claims 11-15 are under consideration in this office action.

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 15, classified in class 424, subclass 165.1.
  - II. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 16, classified in class 424, subclass 165.1.
  - III. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 17, classified in class 424, subclass 165.1.
  - IV. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 24, classified in class 424, subclass 165.1.

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- V. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 31, classified in class 424, subclass 165.1.
  - VI. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 33, classified in class 424, subclass 165.1.
  - VII. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 34, classified in class 424, subclass 165.1.
  - VIII. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 37, classified in class 424, subclass 165.1.
  - IX. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 41, classified in class 424, subclass 165.1.
  - X. Claims 11-15 are drawn to an isolated or recombinant nucleic acid molecule of a Streptococcus origin comprising SEQ ID NO: 43, classified in class 424, subclass 165.1.
3. The inventions are distinct, each from the other because of the following reasons:
- Inventions I and any of II-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP §

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808.01). In the instant case the different inventions drawn to a plurality of disclosed patentably distinct inventions comprising SEQ ID NO's 15, 16, 17, 24, 31, 33, 34, 37, 41 and 43. The separate polypeptides and polynucleotides bear distinct structural or biochemical properties as substantiated by the separate SEQ ID numbers and having different binding epitopes for unique diverse antibodies as defined in the disclosure.

**Therefore, each disclosed patentably distinct polynucleotide is considered a separate invention.** The inventions are distinct, each from the other because of the following reasons: Although there are no provisions under the section for "Related Inventions" in M.P.E.P. 806.05 for inventive groups that are directed to different products; restriction is deemed to be proper because these products appear to constitute patentably distinct inventions for the following reasons: these products appear to constitute patentably distinct inventions for the following reasons: the numbered groups are directed polypeptide and polynucleotide sequences comprising SEQ ID NO: 15, 16, 17, 24, 31, 33, 34, 37, 41 and 43 which are distinct physically, structurally, and functionally and are therefore patentably distinct, each group from the other, and one sequence is not required to practice the other. Each group comprises separate and distinct amino acid or nucleic acid sequences that do not share a substantial structural feature disclosed as being essential to the utility of the invention.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II-X, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines  
July 24, 2005

